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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE

CIS, AAO, 20 MASS, 3/F

425 I Street N.W.

Washington, D.C. 20536

File: WAC 00 161 55223 Office: CALIFORNIA SERVICE CENTER

Date: SEP 16 2003

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

PUBLIC COPY

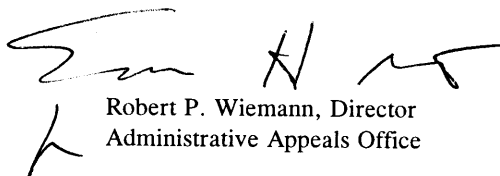
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center, and was subsequently appealed. The Administrative Appeals Office (AAO) summarily dismissed the appeal for the reason that the petitioner failed to submit a brief and state the reason for appeal. The matter is now before the AAO on motion to reopen and reconsider. The motion will be granted. The previous decisions of the director and the AAO will be withdrawn, and the petition will be approved.

The petitioner is a church seeking classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to employ him as a minister.

The director denied the petition, finding that the petitioner failed to establish that it is a qualifying religious organization.

On motion, counsel for the petitioner submits a brief in support of the appeal, asserting that the AAO erred in summarily dismissing its appeal. Counsel asserts that it timely filed its brief in support of the appeal.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year

period described in clause (i).

The beneficiary is a native and citizen of Korea.

The sole issue to be addressed in this proceeding is whether the petitioner is a qualifying religious organization.

8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

The petitioner provided the CIS with an application for tax-exempt status.

The director determined that the petitioner failed to establish that the petitioner qualifies as a tax-exempt religious organization.

On motion, counsel for the petitioner asserts that it meets 8 C.F.R. § 204.5(m)(3)(i)(B) and provided CIS with a letter from the Guam government according the petitioner tax-exempt status under section 501(c)(3) of the Guam Territorial Income Tax Law. Counsel further established that the petitioner is subject to taxation by the Guam government, rather than by the Internal Revenue Service of the United States, and that section 501(c)(3) of Guam's tax law is equivalent to that of the Internal Revenue Code. Counsel's arguments are persuasive. The petitioner established that Guam has its own tax system based on the same tax laws that apply in the United States. The petitioner has established that it is a qualifying organization.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has sustained that burden. Therefore, the decisions of the director and of the AAO denying the petition are withdrawn.

ORDER: The AAO's decision dated September 12, 2002 is withdrawn. The director's March 28, 2001 decision is withdrawn and the petition is approved.